

### ARGUMENTS/REMARKS

Applicants would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action and PreAppeal Brief results, and favorable reconsideration of the subject application is requested in view of the comments and/or amendments made herein.

Claims 22-24, 26-28, 30-32, 34-41 and 43-50 remain in this application. Claims 25, 29, 33 and 42 have been cancelled, and applicant retains the right to present those claims in a divisional application. Claims 51-54 are added by this amendment. No new matter has been added by the new claims or amendments.

The claims were rejected under 35 U.S.C. 102(b) as being anticipated by Hicks (U.S. 6,549,823), or as being unpatentable over Hicks alone, or in various combinations of other references including Vogeley (U.S. 5,937,080) and Rosenberger (US 2002/0035905). For the following reasons, the rejections are respectfully traversed.

The Examiner relies on Hicks for all of the rejections, referring to various portions of Hicks that the reference itself fails to describe as being provided in any single embodiment. However, the claims under rejection have been amended to recite that the food item is a flaccid food item, a feature not disclosed by Hicks.

Block cheese as utilized by Hicks is not a flaccid food item (e.g., cheddar, col. 5, lines 38-39). Thus, the cutting process and the determination of a cutting profile as provided in Hicks cannot take into account the flaccid nature of the food item required by the claims. These cheese blocks, as admitted by Hicks (see Col. 1, lines 11-15 and col. 5, lines 37-45) are generally regular and predictable, even if varying in size and shape, and they are relatively dense and are rigid. In contrast, the shape of flaccid item typically have relatively random shapes and forms. Hicks takes into account that the next cheese block is equivalent to previous blocks. But when cutting food items of arbitrary or non-regular shape, such as flaccid items, it is clear that these differences should be taken into account, such as by planning the entire cutting process before starting out will enable better results than by only planning one cut at a time, and then see (and be restricted to)

what possibilities remain for the next cutting. Thus, the problem of the current application is not present, and thus not known, for the cheese cutting of Hicks.

Hence, the claims are patentable over Hicks, for at least this reason, and furthermore the cited additional references fail to overcome this Hicks shortcoming.

Furthermore, as seen from the above description, Hicks' prior art determines a first cutting profile for the cutting into strips based on measurements of 2 dimensions, and then, after having performed the cutting in accordance with the first cutting profile, a second cutting profile for the cutting into portions based on measurement of the 3rd dimension is determined and carried out.

In other words, Hicks' prior art does not anticipate, cited from claim 22, that the step of determining a portion-cutting profile at the first cutting stage" in any way

comprises determining a *predetermined* dimensions and/or weights for the cutting-up of said food item *into said strips and* for the cutting-up of said strips *into said substantially rectangular pieces*, on the basis of said at least one of a shape, a structure and/or a dimension of said food item *scanned at the first cutting stage* and on the basis of said predetermined weight and/or dimensions.

(emphasis added). When comparing the claim language with regard to Hicks, Hicks (referring to the prior art) does not in col. 1, line 45, to col. 2, line 12, anticipate that the first portion-cutting profile is based on the measurements made before the first cutting stage regards to *both* the "item-to-strips" and the "strips-to-pieces" cutting steps.

This is in contrast to the cited feature of claim 22, that the machine right from the beginning takes the entire cutting process into account for both of the two cutting stages prior to performing any of the cutting steps. There may be several possible dimensions of strips that could be cut from a certain food item, and the best possibility is chosen by considering which of these different strip dimensions would yield the best results in the strips-to-pieces cutting step. The measuring step at the second cutting stage is then used to update the profile to adapt to changes, such as in orientation that might occur during transport, for example. Thus, the Hicks' prior art doesn't plan the entire cutting process based on the first measurement only, and has no motivation to do so. Hence, claim 22,

and the claims dependent thereon, are patentable over the reference for this reason as well.

An attempt to render claim 22 obvious by combining the different alternatives disclosed by Hicks to anticipate both “global” assessment at the first stage and additional scanning and planning at the second stage, is not relevant, as Hicks presents these as merely design alternatives with no complementary advantages and no suggestion to combine them, so one would have no reason to expect any synergetic effect of implementing both alternatives in the same machine. On the contrary, that would seem redundant and unnecessarily complicated as they are described as alternatives to obtain the same result, and Hicks instead clearly intends to eliminate such redundancy, and thus teaches away from any such combinations. However, in the present claim 22, the combination of the first measurement and planning of the entire cutting process before any cutting is carried out, combined with the additional measuring and planning between the two cutting stages, does in fact foresee the unexpected problem that the first cutting stage may not always produce strips exactly as planned, or the strips may move on the conveyor system before reaching the second cutting step, and the present claimed features therefore yield the surprising effect that, citing from the current application page 4, lines 2–4, “it is herewith possible to verify or correct the first measurement from the first cutting device for a possible alteration of the cutting profile for the additional cutting device(s)”.

The above reasoning also applies to claim 41. Thus, the Examiner should withdraw the rejection of claims 22 and 41, and the claims dependent thereon, for at least these reasons.

Regarding new claim 51, this claim specifically requires that a plan for both a first cutting stage and a second cutting stage are determined for obtaining a desired shape distribution after a first measuring device makes a measurement of the food item, but that after the food item is cut into strips and transported to a second measuring device, the plan for the second cutting stage cutting the strips into pieces is validated or updated using another measurement of the second measuring device. In this manner, changes that may occur due to, for example, impacts during the transport or errors in the cutting of

strips can be accommodated to ultimately obtain pieces of the desired shape distribution. Such a feature is not found in any of the prior art.

Hence, claim 51, and the claims dependent thereon, are patentable over the references as well for at least this reason.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. SCAN1-41253.

Respectfully submitted,  
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